

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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BNP PARIBAS MORTGAGE
CORPORATION and BNP PARIBAS

Plaintiff,

Civil Action No. 09-cv-9783-RWS

-against-

BANK OF AMERICA, N.A.,

Defendant.

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-----X

DEUTSCHE BANK AG,

Plaintiff,

Civil Action No. 09-cv-9784-RWS

-against-

BANK OF AMERICA, N.A.,

Defendant.

-----X

**DECLARATION OF RICHARD ST. JOHN IN SUPPORT OF
BANK OF AMERICA'S MOTIONS TO DISMISS THE AMENDED
COMPLAINTS
(WITH EXHIBITS)**

VOLUME I: DECLARATION AND EXHIBITS A-I

TABLE OF CONTENTS

VOLUME I: EXHIBITS A-I

Declaration of Richard St. John.....	1
Second Amended and Restated Security Agreement.....	EXHIBIT A
Series 2008-1 Depositary Agreement.....	EXHIBIT B
Series 2005-1 Amended and Restated Depositary Agreement.....	EXHIBIT C
Second Amended and Restated Custodial Agreement.....	EXHIBIT D
March 2009 Letter from Bank of America, N.A.....	EXHIBIT E
Base Indenture.....	EXHIBIT F
Second Amended and Restated Base Indenture.....	EXHIBIT F1
Schedule I to the Base Indenture, Definitions List.....	EXHIBIT F2
Series 2008-1 Supplement to the Second Amended and Restated Base Indenture.....	EXHIBIT G
Second Amended and Restated Series 2005-1 Supplement to the Second Amended and Restated Base Indenture.....	EXHIBIT H
Second Amended and Restated Mortgage Loan Purchase and Servicing Agreement.....	EXHIBIT I

VOLUME II: EXHIBITS J-Q

Short Term Note Dealer Agreement.....	EXHIBIT J
Subscription and Purchase Agreement for Short Term Notes.....	EXHIBIT K
Private Placement Memorandum, Ocala Funding, LLC.....	EXHIBIT L
Front Swap (Deutsche).....	EXHIBIT M
ISDA Master Agreement.....	EXHIBIT M1
Schedule to the Master Agreement.....	EXHIBIT M2

Confirmation.....	EXHIBIT M3
Front Swap (BNP).....	EXHIBIT N
Second Amended and Restated Schedule to the Master Agreement.....	EXHIBIT N1
Second Amended and Restated Confirmation.....	EXHIBIT N2
Back Swap (DB): Confirmation for U.S. Dollar Rate Swap Transaction.....	EXHIBIT O
Back Swap (BNP).....	EXHIBIT P
Second Amended and Restated Schedule to the Master Agreement.....	EXHIBIT P1
Second Amended and Restated Confirmation for U.S. Dollar Rate Swap Transaction.....	EXHIBIT P2
Second Amended and Restated Credit Support Annex.....	EXHIBIT P3
Second Amended and Restated LLC Agreement.....	EXHIBIT Q
<u>VOLUME III: EXHIBITS R-V</u>	
2006 Ocala Agreements.....	EXHIBIT R
Amended and Restated Base Indenture.....	EXHIBIT R1
Schedule I to the Base Indenture, Definitions List.....	EXHIBIT R2
Amended and Restated Series 2005-1 Supplement to Amended and Restated Base Indenture.....	EXHIBIT R3
Amended and Restated Security Agreement.....	EXHIBIT R4
Amended and Restated Custodial Agreement.....	EXHIBIT R5
Depository Agreement.....	EXHIBIT R6
Indenture Event of Default Notices.....	EXHIBIT S
Letter from Deutsche Bank AG, dated August 5, 2009.....	EXHIBIT S1
Letter from BNP Paribas, dated August 5, 2009.....	EXHIBIT S2

Letter from LaSalle Global Trust Services, dated August 10, 2009.....	EXHIBIT S3
Moody's Investors Service ABCP Program Review of Ocala Funding, LLC.....	EXHIBIT T
HUD Press Release.....	EXHIBIT U
Unpublished Opinion: <i>Nacional Financiera, S.N.C. v. Bankers Trustee Co., Ltd.</i> , Index No. C121131/98 (N.Y. Sup. Ct. Nov. 17, 2000).....	EXHIBIT V
Deutsche Bank AG Form 20-F.....	EXHIBIT W
Company's House Listing for Deutsche Trustee Company Limited.....	EXHIBIT X

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DEUTSCHE BANK AG,

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-against-

BANK OF AMERICA, N.A.,

Defendant.

-----x

**DECLARATION OF RICHARD ST. JOHN IN SUPPORT OF
BANK OF AMERICA'S MOTIONS TO DISMISS THE AMENDED COMPLAINTS**

I, RICHARD ST. JOHN, hereby declare:

1. I am a member of the firm Munger, Tolles & Olson LLP, lead counsel for Bank of America, N.A., the defendant herein. I am admitted to practice law in the States of New York and California and before this Court. I submit this declaration in support of Bank of America, N.A.'s Motions to Dismiss the Amended Complaints filed in the above actions ("Motions to Dismiss"). If called upon as a witness, I could and would testify as to the facts stated in this declaration.

2. **Security Agreement.** Attached hereto as **Exhibit A** is a true and correct copy of a document produced by Taylor, Bean & Whitaker Mortgage Corp. (“TBW”) entitled Second Amended and Restated Security Agreement, dated as of June 30, 2008, among Ocala Funding, LLC; LaSalle Bank National Association, as Indenture Trustee; and LaSalle Bank National Association, as Collateral Agent. (The bar code cover sheet on this exhibit and other exhibits attached to this Declaration was included as produced by TBW.) This document is referred to in Bank of America’s Memorandum in Support of the Motions to Dismiss the Amended Complaints (“Memorandum”) as the “**Security Agreement**” or “**Exhibit A.**” This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, (Exhibit F2 herein), at pp. 12-13, and is one of the agreements upon which Deutsche Bank A.G. (“DB”) and BNP Paribas Mortgage Corp. and BNP Paribas (the latter two entities cumulatively referred to herein as “BNP”) sue herein. *See, e.g.,* DB First Amended Complaint (“FAC”) Count IV (¶¶ 232-43), Count X (¶ 277); BNP FAC 1st Cause of Action (¶¶ 148-58), 2d Cause of Action (¶¶ 159-64).

3. **Depository Agreement (DB).** Attached hereto as **Exhibit B** is a true and correct copy of a document produced by TBW entitled Series 2008-1 Depository Agreement, dated as of June 30, 2008, between Ocala Funding, LLC and LaSalle Bank National Association, as Depository. This document is referred to in the Memorandum as a “**Depository Agreement**” or “**Exhibit B.**” The Series 2008-1 Depository Agreement relates specifically to the 2008-1 Series of Notes purchased by DB. *See* DB FAC ¶¶ 112, 114. This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, and is one of the agreements upon which DB sues herein. *See, e.g.,* DB FAC Count VI (¶¶ 250-55), Count X (¶ 277).

4. Depository Agreement (BNP). Attached hereto as **Exhibit C** is a true and correct copy of a document produced by TBW entitled Series 2005-1 Amended and Restated Depository Agreement, dated as of June 30, 2008, between Ocala Funding, LLC and LaSalle Bank National Association, as Depository. This document is referred to in the Memorandum as a “**Depository Agreement**” or “**Exhibit C**.” The Series 2005-1 Depository Agreement relates specifically to the 2005-1 Series of Notes purchased by BNP. *See* BNP FAC ¶¶ 40, 60, 61. This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, and is one of the agreements upon which BNP sues herein. *See, e.g.*, BNP FAC 3d Cause of Action (¶¶ 165-70); 4th Cause of Action (¶¶ 171-76).

5. Custodial Agreement. Attached hereto as **Exhibit D** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated Custodial Agreement, dated June 30, 2008, between Ocala Funding, LLC, as Issuer; Taylor, Bean & Whitaker Mortgage Corp., as Seller and Servicer; LaSalle Bank National Association, as Custodian; and LaSalle Bank National Association, as Collateral Agent. This document is referred to in the Memorandum as the “**Custodial Agreement**” or “**Exhibit D**.” This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, and is one of the agreements upon which DB and BNP sue herein. *See, e.g.*, DB FAC Count VIII (¶¶ 263-70), Count X (¶ 277); BNP FAC 6th Cause of Action (¶¶ 183-91); 7th Cause of Action (¶¶ 192-99).

6. March 27, 2009 Letter. Attached hereto as **Exhibit E** is a true and correct copy of a letter, dated March 27, 2009, from Bank of America, N.A. to BNP Paribas, that I believe to be the letter referred to in DB’s Complaint at paragraph 108, and the letter referred to in BNP’s Amended Complaint as the “March Letter Agreement,” *see, e.g.*, BNP FAC ¶ 7. This document

is referred to in the Memorandum as the “**March 2009 Letter**” or “**Exhibit E.**” This is one of the documents upon which BNP sues herein. *See* BNP FAC 5th Cause of Action (¶¶ 177-82).

7. **Base Indenture.** Attached hereto as **Exhibit F** are true and correct copies of documents produced by TBW entitled, respectively: (1) Second Amended and Restated Base Indenture, dated as of June 30, 2008, between Ocala Funding, LLC and LaSalle Bank National Association, as Indenture Trustee; and (2) Schedule I to the Base Indenture, Definitions List. These documents are referred to cumulatively in the Memorandum as the “**Base Indenture**” or “**Exhibit F.**” When Schedule I to the Base Indenture, Definitions List is cited specifically, it is referred to as “**Schedule I**” or “**Exhibit F2.**” These documents comprise parts of the “Indenture” and are among the governing documents for the Ocala Funding facility encompassed within the definition of “Facility Documents.” *See* Indenture, Schedule I, at pp. 12-13, 15; *see also* Exhibit F1 § 1.1. The Base Indenture is one of the agreements upon which DB and BNP sue herein. *See, e.g.,* DB FAC Count II (¶¶ 219-22), BNP FAC 8th Cause of Action (¶¶ 200-07).

8. **Indenture Supplement (DB).** Attached hereto as **Exhibit G** is a true and correct copy of a document produced by TBW entitled Series 2008-1 Supplement to the Second Amended and Restated Base Indenture, dated as of June 30, 2008, between Ocala Funding, LLC, as Issuer, and LaSalle Bank National Association, as Indenture Trustee and Paying Agent. The Series 2008-1 Supplement relates to the 2008-1 Series of Notes purchased by DB, and is referred to in DB’s Amended Complaint. *See, e.g.,* DB FAC ¶¶ 111, 112(d), 132, 136, 137, 198-200. This document comprises part of the “Indenture” and is among the governing documents for the Ocala Funding facility encompassed within the definition of “Facility Documents.” *See* Indenture, Schedule I, at pp. 12-13, 15, 38, 42. References in the Memorandum to the “**Indenture,**” cumulatively refer to the Base Indenture (Exhibit F), this document, and Exhibit H (described below).

9. Indenture Supplement (BNP). Attached hereto as **Exhibit H** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated Series 2005-1 Supplement to the Second Amended and Restated Base Indenture, dated as of June 30, 2008, between Ocala Funding, LLC, as Issuer, and LaSalle Bank National Association, as Indenture Trustee and Paying Agent. The Series 2005-1 Supplement relates to the 2005-1 Series of Notes purchased by BNP, and is referred to in BNP's Complaint as the "Indenture Supplement." *See, e.g.*, BNP FAC ¶¶ 69, 70, 79, 89, 134, 201. This document comprises part of the "Indenture" and is among the governing documents for the Ocala Funding facility encompassed within the definition of "Facility Documents." *See* Indenture, Schedule I, at pp. 12-13, 15, 35, 42. References in the Memorandum to the "**Indenture**," cumulatively refer to the Base Indenture (Exhibit F), Exhibit G, and this document.

10. Purchase Agreement. Attached hereto as **Exhibit I** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated Mortgage Loan Purchase and Servicing Agreement, dated as of June 30, 2008, between Ocala Funding, LLC, as Purchaser, and Taylor, Bean & Whitaker Mortgage Corp., as Seller and Servicer. This document is referred to in the Memorandum as the "**Purchase Agreement**" or "**Exhibit I.**" This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of "Facility Documents," *see* Indenture, Schedule I, at pp. 12-13, and is referred to in both Amended Complaints. *See, e.g.*, DB FAC ¶ 112(a), 55; BNP FAC ¶¶ 78-82.

11. Short Term Note Dealer Agreement. Attached hereto as **Exhibit J** is a true and correct copy of a document produced by TBW entitled Short Term Note Dealer Agreement, dated as of April 5, 2005, between Ocala Funding, LLC, the Issuer; Taylor, Bean & Whitaker Mortgage Corp.; and the Short Term Note Dealers: Lehman Brothers Inc. and BNP Paribas

Securities Corp. This document is referred to in the Memorandum as the “**Short Term Note Dealer Agreement**” or “**Exhibit J.**” This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see Indenture, Schedule I*, at pp. 12-13, and, *inter alia*, appoints BNP Paribas Securities Corp. as a Short Term Note Dealer. *See Exhibit J* at p. 1.

12. Subscription and Purchase Agreement. Attached hereto as **Exhibit K** is a true and correct copy of a document produced by TBW entitled Subscription and Purchase Agreement for Short Term Notes, dated as of June 30, 2008. This document is referred to in the Memorandum as the “**Subscription and Purchase Agreement**” or “**Exhibit K.**” This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents.” *See Indenture, Schedule I*, at pp. 12-13, 42.

13. Private Placement Memorandum. Attached hereto as **Exhibit L** is a true and correct copy of a document produced by TBW entitled Private Placement Memorandum, Ocala Funding, LLC, and dated June 2008. This document is referred to in the Memorandum as “**Private Placement Memorandum**,” “**PPM**,” and “**Exhibit L.**” This document, *inter alia*, identifies Deutsche Bank Securities, Inc. and BNP Paribas Securities Corp. as the “placement agents” and “Note Dealers” for the Short Term Notes. *See Exhibit L* at pp. 78, 79. The PPM is referenced in the Short Term Note Dealer Agreement, which, as noted above, is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents.” *See ¶ 11, supra.* Among other things, the Short Term Note Dealer Agreement authorizes the Short Term Note Dealers to “distribute . . . the Private Placement Memorandum to prospective purchasers of the Short Term Notes.” *See Exhibit J* at p. 4.

14. Front Swap (DB). Attached hereto as **Exhibit M** is a true and correct copy of a document produced by TBW entitled **(1)** International Swap Dealers Association (“ISDA”) Master Agreement, dated as of June 30, 2008, between Deutsche Bank, AG, London Branch and Ocala Funding, LLC. As collated herein, this Exhibit also includes **(2)** the Schedule to the Master Agreement, dated as of June 30, 3008, between Deutsche Bank, AG, London Branch and Ocala Funding, LLC (“Schedule”); and **(3)** the Confirmation, dated June 30, 2008, to Ocala Funding, LLC from Deutsche Bank, AG, London Branch (“Confirmation”); both the Schedule and the Confirmation were produced by TBW and are incorporated by reference through the opening paragraph of the ISDA Master Agreement. These documents are referred to in the Memorandum as “**Exhibit M.**” (Exhibits M and N are cumulatively referred to as the “**front swaps.**” Exhibits M and O are cumulatively referred to as the “**DB Swap Documents.**”) Such “Interest Rate Swap[]” documents are among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, 16. These documents relate to the references in DB’s Complaint to “Swap Agreements” and, in particular, its status as “Front Swap Counterparty.” *See, e.g.,* DB Compl. ¶¶ 36, 41, 42(c), 67. DB relies on its status as a “Swap Counterparty” in bringing its breach of contract and indemnification claims under the Custodial Agreement. *See* DB FAC ¶¶ 257, 258(b), 264, 265(b), 272, 277; Exhibit D §§ 17, 25.

15. Front Swap (BNP). Attached hereto as **Exhibit N** are true and correct copies of documents produced by TBW entitled, respectively: **(1)** Second Amended and Restated Schedule to the Master Agreement dated as of June 30, 2008, between BNP Paribas and Ocala Funding, LLC; and **(2)** Second Amended and Restated Confirmation, dated June 30, 2008, to Ocala Funding, LLC from BNP Paribas. These documents are referred to in the Memorandum as “**Exhibit N.**” (Exhibits M and N are cumulatively referred to as the “**front swaps.**” Exhibits N

and P are cumulatively referred to as the “**BNP Swap Documents.**”) Such “Interest Rate Swap[]” documents are among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, 16. BNP relies on its status as a “Swap Counterparty” in bringing its indemnification claim under the Custodial Agreement. *See* BNP FAC ¶ 195-96; Exhibit D § 17. BNP refers to the swap transactions in its Amended Complaint, as well as to BNP Paribas’s status as a Swap Counterparty. *See* BNP FAC ¶ 45, 59, 75, 195-96, 206.

16. **Back Swap (DB).** Attached hereto as **Exhibit O** is a true and correct copy of a document produced by TBW entitled Confirmation for U.S. Dollar Rate Swap Transaction under 1992 Master Agreement, dated June 30, 2008, from Deutsche Bank, AG, London Branch to Taylor, Bean & Whitaker Mortgage Corp. This document is referred to in the Memorandum as “**Exhibit O.**” (Exhibits O and P are cumulatively referred to as the “**back swaps.**” Exhibits M and O are cumulatively referred to as the “**DB Swap Documents.**”) This document relates to the references in DB’s Complaint to “Swap Agreements” and, in particular, its status as “Back Swap Counterparty.” *See, e.g.,* DB Compl. ¶¶ 36, 41, 43(c), 67. DB relies on its status as a “Swap Counterparty” in bringing its breach of contract and indemnification claims under the Custodial Agreement. *See* DB FAC ¶¶ 257, 258(b), 264, 265(b), 272, 277; Exhibit D §§ 17, 25.

17. **Back Swap (BNP).** Attached hereto as **Exhibit P** are true and correct copies of documents produced by TBW entitled, respectively: (1) Second Amended and Restated Schedule to the Master Agreement dated as of March 27, 2006, between BNP Paribas and Taylor, Bean & Whitaker Mortgage Corp.; (2) Second Amended and Restated Confirmation for U.S. Dollar Rate Swap Transaction under 1992 Master Agreement, dated June 30, 2008, from BNP Paribas to Taylor, Bean & Whitaker Mortgage Corp.; and (3) Second Amended and Restated Credit Support Annex between BNP Paribas and Taylor, Bean & Whitaker Mortgage Corp. These

documents are referred to in the Memorandum as “**Exhibit P.**” (Exhibits O and P are cumulatively referred to as the “**back swaps.**” Exhibits N and P are cumulatively referred to as the “**BNP Swap Documents.**”) BNP relies on its status as a “Swap Counterparty” in bringing its indemnification claim under the Custodial Agreement. *See* BNP FAC ¶¶ 195-96; Exhibit D § 17. BNP also makes explicit reference to the swap transactions in its Amended Complaint, as well as to BNP Paribas’s status as a Swap Counterparty. *See* BNP FAC ¶¶ 45, 59, 75, 195-96, 206.

18. **LLC Agreement.** Attached hereto as **Exhibit Q** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated LLC Agreement, dated June 30, 2008, between Ocala Funding, LLC, as Issuer; Taylor, Bean & Whitaker Mortgage Corp., as Manager and Member; and Colleen A. Devries, as Special Member. This document is referred to in the Memorandum as the “**LLC Agreement**” or “**Exhibit Q.**” This agreement is among the governing documents for the Ocala Funding facility that are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, 17. The LLC Agreement, among other things, appoints TBW “Manager” of Ocala Funding, LLC. Exhibit Q § 4.1(a) at pp. 10-11.

19. **2006 Ocala Agreements.** Attached hereto as **Exhibit R** are true and correct copies of documents produced by TBW entitled, respectively: **(1)** Amended and Restated Base Indenture, dated as of March 27, 2006, between Ocala Funding, LLC and LaSalle Bank National Association, as Indenture Trustee; **(2)** the accompanying Schedule I to the Base Indenture, Definitions List; **(3)** Amended and Restated Series 2005-1 Supplement to Amended and Restated Base Indenture, dated as of March 27, 2006, between Ocala Funding, LLC, as Issuer, and LaSalle Bank National Association, as Indenture Trustee and Paying Agent; **(4)** Amended and Restated Security Agreement, dated as of March 27, 2006, between Ocala Funding, LLC;

LaSalle Bank National Association, as Indenture Trustee; and LaSalle Bank National Association, as Collateral Agent; and (5) Amended and Restated Custodial Agreement, dated March 27, 2006, between Ocala Funding, LLC, as Issuer; Taylor, Bean & Whitaker Mortgage Corp., as Seller and Servicer; LaSalle Bank National Association, as Custodian; and LaSalle Bank National Association, as Collateral Agent. Attached also as part of Exhibit R is an executed agreement collected from a records custodian at Bank of America, N.A., entitled (6) Depositary Agreement, dated as of March 30, 2005, between Ocala Funding, LLC and LaSalle Bank National Association, as Depositary. DB refers to these documents as the “2006 Ocala Agreements” in its Amended Complaint. *See* DB FAC ¶ 38; *see also* Exhibit F1 § 1.1. DB sues under the 2006 Ocala Agreements for breach of contract and indemnification. *See* DB FAC Count I (¶¶ 215-18); Count III (¶¶ 223-31); Count V (¶¶ 244-49); Count VII (¶¶ 256-62); Count IX (¶¶ 271-75).

20. Indenture Event of Default Notices. Attached hereto as **Exhibit S1, S2, and S3, respectively**, are true and correct copies of (1) a letter dated August 5, 2009, from Deutsche Bank AG, London Branch to LaSalle Bank National Association; Ocala Funding, LLC; and Taylor, Bean & Whitaker Mortgage Corp.; (2) a letter dated August 5, 2009, from BNP Paribas to Ocala Funding, LLC and Taylor, Bean & Whitaker Mortgage Corp., copying Bank of America, N.A. and Deutsche Bank AG, London Branch; and (3) a letter dated August 10, 2009, from LaSalle Global Trust Services to, among others, Deutsche Bank AG, London and BNP Paribas. Exhibit S2 is referenced and quoted in BNP’s Amended Complaint at paragraph 88. Exhibit S3 is referenced and quoted in BNP’s Amended Complaint at paragraph 89 and referred to in DB’s Amended Complaint at paragraph 211. Exhibit S3 also expressly references and addresses the notice provided under Exhibit S1; among other things, Exhibit S3 states that “we

have been notified by the Series 2008-1 Swap Counterparty that a Potential Indenture Event of Default under Section 9.1(b) of the Base Indenture has occurred”

21. Moody's Report. Attached hereto as **Exhibit T** is a true and correct copy of a document entitled Moody's Investors Service ABCP Program Review of Ocala Funding, LLC, dated July 13, 2009. This document is referred to in the Memorandum as the “**Moody's ABCP Market Review**” or “**Exhibit T.**” Portions of this document are quoted in DB’s Complaint and BNP’s Amended Complaint. *See* DB Compl. ¶ 12; BNP FAC ¶ 34.

22. HUD Press Release. Attached hereto as **Exhibit U** is a true and correct copy of a News Released dated August 4, 2009 titled “FHA Suspends Taylor, Bean & Whitaker Mortgage Corp. and Proposes To Sanction Two Top Officials,” downloaded from the U.S. Department of Housing and Urban Development (“HUD”) website at [http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2009/HUD](http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2009/HUD>No.09-145) No.09-145. Based on the date and content of this document, I believe this to be the HUD press release referred to by BNP and the Federal Housing Administration announcement referred to by DB in their Amended Complaints. *See* BNP FAC ¶ 85; DB FAC ¶ 207.

23. Unpublished Opinion. Attached hereto as **Exhibit V** is a true and correct copy of the court’s memorandum decision in *Nacional Financiera S.N.C., v. Bankers Trustee Co. Ltd.*, Index No. C121131/98 (N.Y. Sup. Ct. Nov. 17, 2000).

24. DB Corporate Documents. Attached hereto as **Exhibit W** are true and correct excerpts of DB’s Securities and Exchange Commission (“SEC”) form 20-F dated March 27, 2002, downloaded from the SEC’s website at <http://www.sec.gov/Archives/edgar/vprr/02/999999997-02-018746>. Attached hereto as **Exhibit X** is a true and correct copy of a record concerning Deutsche Trustee Company Limited

downloaded from the website of the official United Kingdom company register at
<http://wck2.companieshouse.gov.uk/4fb407fb59e4d47eb900d510c5371998/compdetails>.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
29th day of April, 2010, in Los Angeles, California.



Richard St. John